



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

October 3, 2017

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer John Tan**
Tax Registry No. 940789
Fleet Services Division
Disciplinary Case No. 2016-16562

The above named member of the service appeared before Assistant Deputy Commissioner Jeff S. Adler on May 9, 2017, and was charged with the following:

DISCIPLINARY CASE NO. 2016-16562

1. Said Police Officer John Tan, while assigned to the 112th Precinct, on or about June 5, 2015, while on duty, did wrongfully and without just cause utilize Department databases to make inquiries unrelated to the official business of the Department or the City of New York, to wit: said Officer conducted an inquiry for arrests made in Manhattan in 2015, where the top arrest charge was Prostitution.

P.G. 219-14, Page 1, Paragraph 2

**DEPARTMENT COMPUTER
SYSTEMS**

2. Said Police Officer John Tan, while assigned to the 112th Precinct, on or about August 23, 2015, while on duty, did wrongfully and without just cause utilize Department databases to make inquiries unrelated to the official business of the Department or the City of New York, to wit: said Officer conducted an inquiry regarding arrests made by his partner, Police Officer Person A, and viewed an arrest where the top arrest charge was Prostitution.

P.G. 219-14, Page 1, Paragraph 2

**DEPARTMENT COMPUTER
SYSTEMS**

3. Said Police Officer John Tan, while assigned to 112th Precinct, on or about and between March 1, 2016, and March 31, 2016, engaged in conduct prejudicial to the good order and efficiency of the Department, to wit: said Police Officer entered an illegal massage parlor where he engaged in a sexual act in exchange for a sum of United States Currency.

P.G. 203-10, Page 1, Paragraph 5

**GENERAL REGULATIONS -
PROHIBITED**

In a Memorandum dated June 12, 2017, Assistant Deputy Commissioner Jeff S. Adler found the Respondent Guilty, after he Pleaded Guilty to Specification Nos. 1, 2 and 3 in Disciplinary Case No. 2016-16562. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

The Respondent's misconduct is egregious and warrants separation from the Department. However, instead of an outright dismissal from the Department, I will permit an alternative manner of separation from the Department for the Respondent at this time.

It is therefore directed that an *immediate* post-trial negotiated agreement be implemented with the Respondent, under which he shall forfeit thirty (30) suspension days (to be served), he will be placed on One-Year Dismissal Probation, he will forfeit all time previously served while on suspension, with and without pay, if any, and waive all time and leave balances, including terminal leave, if any, and immediately file for vested-interest retirement.

Such vested-interest retirement shall also include the Respondent's written agreement to not initiate administrative applications or judicial proceedings against the New York City Police Department to seek reinstatement or return to the Department. If the Respondent does not agree to the terms of this vested-interest retirement agreement as noted, this Office is to be notified without delay. This agreement is to be implemented **IMMEDIATELY**.


James P. O'Neil
Police Commissioner



POLICE DEPARTMENT CITY OF NEW YORK

June 12, 2017

MEMORANDUM FOR: Police Commissioner

Re: Police Officer John Tan
Tax Registry No. 940789
Fleet Services Division
Disciplinary Case No. 2016-16562

Charges and Specifications:

1. Said Police Officer John Tan, while assigned to the 112th Precinct, on or about June 5, 2015, while on duty, did wrongfully and without just cause utilize Department databases to make inquiries unrelated to the official business of the Department or the City of New York, to wit: said Officer conducted an inquiry for arrests made in Manhattan in 2015, where the top arrest charge was Prostitution.
P.G. 219-14, Page 1, Paragraph 2 - DEPARTMENT COMPUTER SYSTEMS
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P.G. 219-14, Page 1, Paragraph 2 - DEPARTMENT COMPUTER SYSTEMS
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P.G. 203-10, Page 1, Paragraph 5 - GENERAL REGULATIONS - PROHIBITED

Appearances:

For the Department: Anna Krutaya, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: John Tynan, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

Hearing Date:

May 9, 2017

Decision:

Guilty

Trial Commissioner:

ADCT Jeff S. Adler

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on May 9, 2017. Respondent, through his counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. The Department called Detective Joseph DeMartini as a witness. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Respondent on June 5, 2015 accessed the Department's Omniform database to do a search on prostitution arrests in Manhattan that year. Respondent testified that while on his lunch break at the 112th Precinct, he retrieved seven prostitution arrests from a random Manhattan neighborhood. The Omniform system contains the addresses and telephone numbers of those arrested, though Respondent claimed he only opened up the arrest reports in order to see the gender of the person arrested. [REDACTED]

[REDACTED]

[REDACTED] (Tr. 15-17, 33-37, 40-42)

From his training at the Academy, Respondent knew it was wrong to use the Department computer for his personal use. Also, in 2014 Respondent had received a

command discipline for misusing a Department computer to look up the prostitution information of a female he was seeing at the time ¹ (Tr. 13-14, 17)

On August 23, 2015, Respondent again did an unauthorized computer check for his personal use. According to Respondent, he was curious about the arrest activity of a new officer at the precinct, Officer Person A, and so he twice accessed the Department computer to view nine of the officer's arrests. After discovering a prostitution arrest, Respondent was interested in seeing whether the person arrested by Officer Person A was male or female. The person arrested turned out to be a female, who had four other arrests; Respondent also opened these associated arrests. Respondent claimed he viewed the four additional arrest reports of the female for no particular reason. (Tr. 24-25, 45-48, 67)

Respondent, [REDACTED], testified that in March of 2016, he walked into a random massage parlor near Roosevelt Avenue and Main Street in Flushing in order to get a back rub. He paid \$40 up front for the massage, and claimed that his intention was only to get the back rub. Near the end of his hour, however, the female masseuse reached her hands inside his boxer shorts and performed a sexual act on his groin area. Respondent stated that he felt shocked and awkward, but did nothing to stop her. Before leaving, Respondent left the masseuse an additional \$20, and took no police action against the spa. (Tr. 27-29, 50-52) When asked at his Department interview whether he had ever received sexual services in exchange for money, Respondent volunteered the details of this incident. (Tr. 49)

¹ As this tribunal informed the parties during the hearing, evidence of the command discipline is not being considered as a prior bad act, but only for the limited purpose of establishing that Respondent had been placed on disciplinary notice as to the inappropriateness of using the Department database in this manner.

PENALTY RECOMMENDATIONS

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on January 9, 2006. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. The Department Advocate asks that Respondent be dismissed from the Department, while counsel for Respondent argues for a lesser penalty.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. To be sure, all officers have personal issues with which they must deal. But those individuals who wish to remain with the Department must take care not to have these personal issues interfere with the proper discharge of their duties.

As a police officer, Respondent has access to the personal information of those with whom the Department comes into contact. It is imperative that members of service not abuse this authority, and certainly not exploit it for their personal use. ■

[REDACTED]
[REDACTED]
[REDACTED]
Respondent should have known this, since in 2014 he was disciplined for a similar misuse of the Department's computers when he checked on a prostitute [REDACTED]

[REDACTED] It is troubling that just a year later, Respondent again engaged in comparable misconduct.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] This conduct constituted a clear breach of trust by the officer.

Compounding the situation is Respondent's conduct at the massage parlor approximately six months later. This tribunal is not persuaded that the sexual act at the end of the massage was as unexpected as Respondent claimed. The fact that Respondent did nothing to stop the act, and then paid the masseuse an additional \$20, suggests that Respondent may have been a willing participant in what occurred. To his credit, Respondent volunteered information regarding this incident at his Department interview, and seemed genuinely embarrassed by his behavior when he described it on the witness stand. But the conduct itself is unacceptable, not only for what transpired, but as the

Department Advocate points out, for Respondent's failure to take any law enforcement action against the location afterward.

Neither side cites any cases dealing primarily with the misuse of the Department's computer system. However, the penalties for such misconduct generally run in the area of 15 vacation days. For instance, in *Disciplinary Case No. [REDACTED]*, a 12-year officer with no disciplinary history negotiated a plea of 15 vacation days for having an inappropriate relationship with a woman he had counseled as a Domestic Violence Officer, utilizing a Department computer to conduct a database query unrelated to Department business, and wrongfully revealing the confidential findings to the woman. And in *Disciplinary Case No. [REDACTED]*, a 19-year detective with no disciplinary history negotiated a plea of 15 vacation days for socializing with an individual whom he knew had been arrested for various crimes, and conducting six unauthorized computer inquiries to view complaint and arrest reports for that individual's prior arrests.

There is a scarcity of recent precedent for the issues presented in the third specification involving the sexual conduct at the massage parlor. In arguing for a penalty other than dismissal, counsel for Respondent cites multiple cases from several years back, including *Disciplinary Case No. 83111/07* (Dec. 30, 2008). In that case, the sergeant agreed to forfeit six vacation days, twenty-four suspension days already served, and was placed on one-year dismissal probation, for patronizing a prostitute. At the time of the plea, the DCT noted that such a penalty was in line with similar previous cases. Counsel for Respondent Tan argues that even adding in additional forfeiture days to account for the improper computer searches, the precedent still does not support termination here.

The Department Advocate counters that the precedent relied upon by Respondent is too outdated, and instead cites two more recent cases. However, the two cases cited are readily distinguishable from the present one. In *Disciplinary Case No. 13035/2015* (Jan. 29, 2015), a *probationary* officer was terminated after failing an integrity test involving an undercover officer posing as a prostitute. The respondent sent texts to the undercover arranging to exchange money for sex. The respondent, while apparently on duty, then went to an agreed upon motel, where he was arrested by IAB and charged with patronizing a prostitute. Aside from the facts of that case being more egregious than the present one, that case involved a probationary officer, which critically distinguishes it from the situation here.

In the other case cited by the Department Advocate, *Disciplinary Case No. 9152/2013* (July 2, 2015), an officer was summarily terminated after being convicted in Queens County of three class A misdemeanors: official misconduct, patronizing a prostitute, and conspiracy. Part of that case involved the officer soliciting sexual acts from two prostitutes, one of whom was a minor less than 17 years old. That case, too, is distinguishable, as the facts there were far more egregious than those involving Respondent Tan who was never even arrested.

It is imperative that the Department's disciplinary system be administered in a principled, consistent, and even-handed manner. The proper application of precedent is an essential part of that process. To be sure, Respondent needs to be held accountable for his conduct in this case. Nevertheless, for the reasons discussed above, this tribunal concludes that it is inappropriate to rely upon either of the cases cited by the Department Advocate, and that the legal precedent otherwise does not support termination here.

Having said that, there still is very much that is troubling in the behavior of Respondent in this matter, and a period of monitoring is warranted. Were it within this tribunal's authority to recommend a penalty that also includes counseling for Respondent, it would be recommended unhesitatingly, since it is apparent that Respondent is in need of such assistance. Having taken into account the entire circumstances in this matter, including Respondent's acknowledgement of guilt, the nature of his misconduct, and the case precedent, I recommend that Respondent be suspended for thirty (30) days without pay, and that he be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one (1) year pursuant to Section 14-115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. This penalty will ensure close monitoring of Respondent's future behavior, while reinforcing the seriousness of his misconduct in this matter.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials





POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER JOHN TAN
TAX REGISTRY NO. 940789
DISCIPLINARY CASE NO. 2016-16562

Respondent was appointed to the Department on January 9, 2006. On his last three annual performance evaluations, he received 3.5 overall ratings of "Highly Competent/Competent" in 2015 and 2016, and a 3.0 "Competent" rating in 2014. [REDACTED]
[REDACTED]

Respondent has no prior formal disciplinary history. He was placed on Level 1 Discipline Monitoring on January 30, 2017 in connection with the instant Charges and Specifications. It remains ongoing.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials